

(24,659)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 104.

WESTERN TRANSIT COMPANY, PLAINTIFF IN ERROR,

vs.

A. C. LESLIE & COMPANY, LIMITED.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

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a STATE OF NEW YORK:

Supreme Court, Appellate Division, Fourth Department.

A. C. LESLIE & CO., LTD., Plaintiff-Respondent,
vs.

THE WESTERN TRANSIT COMPANY, Defendant-Appellant.

RECORD ON APPEAL.Rogers, Locke & Babcock, Attorneys for Plaintiff-Respondent,
816 Fidelity Building, Buffalo, N. Y.Hoyt & Spratt, Attorneys for Defendant-Appellant, 77 West Eagle
Street, Buffalo, N. Y.**b Statement Under Rule 41.**

This action was commenced by the service of a summons and complaint on defendant on the 20th day of April, 1911, by Bartholomew & Bartholomew, attorneys for the plaintiff. The answer of the defendant was served on the plaintiff on the 3rd day of June, 1911 by Hoyt & Spratt, its attorneys. Thereafter Rogers, Locke & Babcock were substituted for Bartholomew & Bartholomew as attorneys for the plaintiff. There has been no change of parties or attorneys except as above stated.

c City Court of Buffalo.

No. 10513.

A. C. LESLIE & COMPANY, LTD., Plaintiff,
vs.
WESTERN TRANSIT COMPANY, Defendant.**To the Supreme Court.**

Pursuant to the annexed notice of appeal, I, the undersigned, one of the Judges of the City Court of Buffalo, before whom the above entitled action was tried, do hereby return the process, pleadings, proceedings and judgment in said action as follows:

A summons was issued in this action on the 20th day of April, 1911, returnable on the 28th day of April, 1911, at 9:30 o'clock in the forenoon, which said summons, together with a copy of the complaint in said action, was duly served upon said defendant on the 20th day of April, 1911, as appears by affidavit of service thereon.

April 20.—Summons and verified complaint with proof of service filed.

April 28.—Case called. Plaintiff appeared by Bartholomew &

Bartholomew, and defendant by Hoyt & Spratt, answer filed and case placed on ready calendar.

Oct. 18, 1912.—Stipulation substituting Rogers, Locke & Babcock in the place and stead of Bartholomew & Bartholomew, as attorneys for the plaintiff, filed.

Jan. 14, 1913.—Case reached on regular call of day calendar and parties appeared and proceeded to trial. Stipulation of facts filed and defendant assumes affirmative.

The following witnesses were sworn on behalf of the defendant:

John Hartnett, William J. O'Brian and Martin Nolan.

Defendant rests.

Case to be considered on filing briefs.

Jan. 20, 1913.—Briefs filed.

Feb. 3, 1913.—Time for decision extended until February 18, 1913.

Feb. 18, 1913.—Judgment rendered in favor of plaintiff and against defendant for

<i>d</i>	Damages	\$340.17
	Court costs	1.95
	Statutory costs	29.00
		<hr/> \$371.12

I do further return that the matters and amounts litigated upon said trial were the same as set forth in the pleadings hereunto annexed, and made a part of this return.

I do further return that the appellant, at the time of filing said notice of appeal, March 6, 1913, paid into this court, \$30.95, costs and \$2., for this return.

All of which is respectfully submitted.

PETER MAUL,
Justice, City Court of Buffalo.

1 STATE OF NEW YORK:

Supreme Court, Appellate Division, Fourth Department.

City Court of Buffalo.

No. 10513.

A. C. LESLIE & Co., LTD., Plaintiff,

vs.

THE WESTERN TRANSIT COMPANY, Defendant.

Summons.

To the above named defendant:

You are hereby summoned to appear in the City Court of Buffalo, in Part III of the City Court Building, No. 42 Delaware avenue, in

the City of Buffalo, New York, on the 28th day of April, 1911 at 9:30 o'clock in the forenoon, to answer the complaint of the plaintiff in this action, and in case of your failure to appear and answer, judgment will be taken against you for the sum of — dollars, with interest thereon from the — day of —, the relief demanded in the complaint, besides the costs of this action.

Dated, Buffalo, New York, April 20, 1911.

WILLIAM J. HILLERY,
Chief Clerk.

2

Complaint.

City Court of Buffalo.

A. C. LESLIE & Co., LTD.,
vs.
THE WESTERN TRANSIT COMPANY.

The Plaintiff for its complaint against the above named defendant, by Bartholomew & Bartholemew, its attorneys, alleges and avers as follows:

First. That heretofore and during all the times hereinafter mentioned plaintiff was and still is a joint stock company incorporated under the Companies Act of the Dominion of Canada, and having its office and principal place of business in the City of Montreal, Canada.

Second. That heretofore and during all the times hereinafter mentioned the defendant was and still is a domestic corporation organized and existing under the laws of the State of New York, with an office and place of business in the City of Buffalo, N. Y., and is engaged in interstate commerce between the States of Michigan and New York.

Third. That heretofore and on or about the month of November, 1908, the defendant as warehouseman received and placed 3 in storage at Buffalo, N. Y., 1036 ingot bars of copper marked MN 102 and 979 ingot bars of copper marked MN 97. That the said ingot bars were the property of the plaintiff and the defendant on or about the 26th day of November, 1908, undertook to hold and keep in storage said copper pursuant to the terms of a certain storage circular I. C. C. No. 236, a copy of which is hereto annexed and made a part of this complaint.

Fourth. That the defendant undertook to hold said goods in storage and thereafter deliver them to the New York Metal Selling Co. at New York, New York, but that the defendant has failed, refused and neglected to deliver thirty-six (36) of said copper ingots weighing 1882 pounds, of the reasonable value of \$.1442 per pound, amounting in all to \$271.38, though the same have been demanded from the said defendant, and said defendant still fails, refuses and neglects to deliver the said 36 ingots.

Fifth. That the value of said ingots is the sum of \$271.38, in which sum the plaintiff has suffered loss and damage, and plaintiff

alleges upon information and belief that said ingots have been lost through the negligence of the defendant and through no negligence on the part of the plaintiff contributing thereto.

Wherefore, plaintiff demands judgment against the said defendant for the sum of two hundred seventy-one dollars and thirty-eight cents (\$271.38), with interest thereon from November 26, 1908,
4 together with the costs of this action.

BARTHOLOMEW & BARTHOLOMEW,
Attorneys for Plaintiff.

1106 Prudential Bldg., Buffalo, N. Y.

SCHEDULE "A."

I. C. C. No. 236, Superceding I. C. C. No. 231. The Western Transit Company.

New York Central & Hudson River R. R. Line.

General Office.

Copper and Copper Matte, Pig Lead and Spelter for Storage and Diversion at Buffalo.

The Western Transit Company will accept shipments of Copper and Copper Matte, Pig Lead and Spelter for storage and diversion at Buffalo, under the following rules:

1. The Western Transport Company, at request of owners will furnish free storage on shipments of Copper and Copper Matte, Pig Lead and Spelter in transit, at Buffalo, for a period not exceeding four months.

2. If held longer than four months, it will be subject to a charge of one-half ($\frac{1}{2}$) cent per 100 pounds for each thirty (30) days or part thereof so held.

5 3. Shipments held under this arrangement will be at owner's risk, and will not be accepted for storage unless arrangements are made with the undersigned previous to forwarding from Western Lake Ports.

4. Shipments ordered out of storage will be charged at the through rate in effect at time the shipment originated, to points to which through rates are published by The Western Transit Company.

5. Shipments ordered to points to which no through rates are in effect via The Western Transit Company, will be charged at the local rate to and from Buffalo.

Issued, May 15th, 1908.

Effective, June 16th, 1908.

EDWIN T. DOUGLASS,
General Manager, Buffalo, N. Y.

STATE OF NEW YORK,

County of Erie, City of Buffalo, ss:

A. Glenni Bartholomew, being duly sworn, deposes and says that he is attorney for plaintiff in the foregoing action; that he has read the foregoing complaint and knows the contents thereof; that the same is true to the knowledge of deponent, except as to the matters therein stated to be alleged upon information and belief,
 6 and as to those matters he believes it to be true. That the reason why this verification is not made by the plaintiff is that plaintiff is a foreign corporation. That the sources of deponent's information are the complete files of contracts and correspondence between the parties.

A. GLENNI BARTHOLOMEW.

Sworn to before me, this 20 day of April, 1911.

C. T. SAUTER,
*Com'r of Deeds, Buffalo, N. Y.**Answer.*

City Court of Buffalo.

A. C. LESLIE & COMPANY, LIMITED, Plaintiff,
vs.
WESTERN TRANSIT COMPANY, Defendant.

The defendant, by Hoyt & Spratt, its attorneys, for answer to the complaint of the plaintiff:

First. Denies that it has any knowledge or information sufficient to form a belief as to the allegations of said complaint contained therein in paragraph numbered "First."

7 Second. Admits the allegations of said complaint contained therein in paragraph numbered "Second."

Third. Denies on information and belief each and every allegation of said complaint contained therein in paragraphs thereof numbered "Third", "Fourth" and "Fifth."

For a separate distinct and affirmative defense to the allegations of said complaint, this defendant reasserting and realleging each and every allegation and denial of this answer with the same force and effect as though they were herein again set out in full, alleges on information and belief that if any shipment of ingots bars of copper was received from this plaintiff and handled by this defendant, and it was so carried, handled and stored under and by virtue of all duties and obligations imposed upon this defendant as a common carrier of such goods or shipment for hire; and carried, handled and stored by this defendant as a common carrier of goods for hire only, and that as such carrier for hire its duties and obligations were contained in a certain bill of lading and agreement entered into by the plaintiff with this defendant in which amongst other things, it was agreed that the value of the shipment in ques-

tion was released to a value not to exceed one hundred dollars (\$100.00) per net ton, limited by written agreement. That the bill of lading and agreement contained the following clauses which was stipulated and agreed to by the plaintiff herein as binding upon it, to-wit: "The consignor of this property has the option of shipping same at a higher rate without limitation as to value in case 8 of loss or damage from causes which would make the carrier liable, but agrees to the specified valuation named in case of loss or damage from causes which would make the carrier liable because of the lower rate thereby accorded for transportation." That this clause aforesaid and other clauses of the bill of lading governs the rights and liabilities of both the plaintiff and defendant, herein, and defendant begs leave to refer to all of these clauses in the bill of lading and agreement, and to the bill of lading and agreement itself as part of this answer, and as an affirmative defense to the allegations of the complaint.

Wherefore defendant demands judgment dismissing the plaintiff's complaint with costs.

HOYT & SPRATT,
Attorneys for Defendant.

77 West Eagle Street, Buffalo, N. Y.

STATE OF NEW YORK,
County of New York, ss:

Edward L. Rossiter, being duly sworn, deposes and says that he is an officer of the above named defendant, to-wit, the Treasurer thereof; that he has read the foregoing answer and knows the contents thereof; that the same is true to the knowledge of deponent, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

9
E. L. ROSSITER.

Subscribed and sworn to before me, this 1st day of June, 1911.

ALBERT B. QUENCER,
Notary Public, N. Y. County.

Case and Exceptions.

City Court of Buffalo.

No. 10513.

A. C. LESLIE & CO., LTD., Plaintiff,
vs.
THE WESTERN TRANSIT COMPANY, Defendant.

Trial before Hon. Peter Maul, Judge, City Court, without a jury, on the 14th day of January, 1913, at 2:30 P. M.

Appearances: Rogers, Locke & Babcock, Attorneys for plaintiff;

W. W. Dickinson, of Counsel; Hoyt & Spratt, Attorneys for defendant; Lester F. Gilbert, of Counsel.

The following stipulation was presented to the court:

"It is hereby stipulated by and between the attorneys for the respective parties to the above entitled action as follows:

10 First. That heretofore and during all the times herein-after mentioned the plaintiff was and still is a joint stock corporation incorporated under the Companies Act of the Dominion of Canada, having its office and principal place of business in the City of Montreal, Canada.

Second. That heretofore and during all the times hereinafter mentioned the defendant was and still is a domestic corporation organized and existing under the laws of the State of New York with an office and place of business in the City of Buffalo, and is engaged in interstate commerce between the States of Michigan and New York.

Third. That heretofore and on or about the 23rd day of September, 1908, the plaintiff delivered to the defendant at Houghton, Michigan, 1036 ingots of Lake Copper for transportation consigned to the New York Metal Selling Co. at New York City; that said goods were shipped by the Michigan Smelting Co. as agents for the plaintiff and at the time of said delivery to the defendant a bill of lading was issued by the defendant and received by the Michigan Smelting Co. as agent for the plaintiff, a copy of which bill of lading is hereto attached and made a part of this stipulation.

Fourth. That the bill of lading provided that said goods were to be held at Buffalo for orders.

Fifth. That prior to the date of shipment at Houghton, Mich., tariffs had been duly printed and filed with the Interstate Commerce Commission covering the movement here in question, and duly printed copies thereof duly posted as required by the act of Congress entitled 'An Act to regulate Commerce, approved February 4th, 1887, and the Acts amendatory thereof.' That said tariffs applied to the present shipment and were as follows:

Copper ingots, minimum weight as per official classification value not to exceed \$100 per ton, 18c per ton.

Copper ingots, minimum weight as per official classification, valuation not expressed, 30c per ton.

That said rates were in force when said shipment was made and at all times herein in question. That the plaintiffs paid the freight provided in said tariff for the transportation of copper ingots not exceeding \$100 per ton in value.

Sixth. That said copper was transported by the defendant on board the Steamer "Buffalo" and was thereafter held by the defendant at Buffalo subject to the plaintiff's further directions and orders, pursuant to the terms of the bill of lading.

Seventh. That on November 26, 1908, the defendant wrote the plaintiff advising plaintiff of the arrival of said 1036 ingots bars of copper and their unloading on September 30, 1908, and notifying the plaintiff that said copper would be held at Buffalo subject to storage circular I. C. C. No. 236. That said circular was also